EXHIBIT C

U.S. Department of Justice

United States Attorney
Southern District of New York

United States Courthouse
300 Quarropas Street
White Plains, New York 10601

August 12, 2016

BY EMAIL
Michael L. Brown, Esq.
Leanne Marek Kantner, Esq.
Alston & Bird LLP
One Atlantic Center, 1201 West Peachtree Street
Atlanta, GA 30309

Re: **United States v. Jiaqiang Xu**
S1 16 Cr. 10 (KMK)

Dear Mr. Brown and Ms. Kantner:

This letter is in response to your letter and email dated August 8, 2016.

Consistent with the request in your email, we are preparing a copy of the Google search warrant returns that we previously produced to you in order to produce it to the jail directly in order for the defendant to have access to it. To this end, please provide a hard drive (of any size) onto which we may place the materials and any files needed in order for them to be reviewable on the hard drive.

Regarding point (1) of your letter, we will not provide all communications between the FBI and IBM regarding the defendant or the investigation. In our view, this information is not subject to discovery and inspection. See Fed. R. Crim. Proc. 16(a)(2). We disagree that such communications must be produced pursuant to Brady and its progeny. We are aware of our Brady/Giglio obligations, and we have and will continue to meet those obligations as to information that may be helpful to the defense or useful for impeaching a witness. To the extent that any such communications constitute a witness's 3500 material, we will disclose them in advance of that witness's testimony. With respect to the example you suggest—i.e., that IBM perhaps reviewed code provided by the defendant and determined that it was not a trade secret, which would be helpful to the defense—we are aware of no such information.

Regarding point (2) of your letter, we will not provide all internal reports and summaries or 302 reports regarding the defendant or the investigation. These reports are not subject to discovery and inspection. See Fed. R. Crim. Proc. 16(a)(2). Nor is it our understanding that general references to reports in search warrant affidavits, or your suggestion that you are assessing whether to challenge search warrants pursuant to Franks v. Delaware, alters our Rule 16 discovery obligations. Additionally, we are unaware of any basis for any non-frivolous motion to suppress evidence obtained via search warrants in this case based on Franks.

If you have any more specific or articulable basis for your request for non-discoverable reports and/or for an anticipated motion pursuant to Franks, please let us know and we will reconsider whether to produce investigative reports even if such production is not required.

Regarding point (3) of your letter, we have already provided reports of Eric Agar of IBM setting forth assessments of the trade secret stolen by the defendant. (See Bates ## 43-172, 1112-33, 1215-1309.) We further anticipate providing notice to you, pursuant to Rule 16(a)(1)(G), of Mr. Agar as an expert witness, and will produce such documents that are necessary to make sufficient expert notice. To the extent that you seek documents in addition to these productions, such as interim reports, preliminary assessments, or other communications, because these documents do not constitute Rule 16 or otherwise discoverable material, we will not provide these documents, other than as 3500 material where appropriate. In addition, we are unaware of any information provided by IBM regarding the trade secret that the defendant stole that would be helpful to the defense.

Regarding point (4) of your letter, please find enclosed draft transcripts, which we provide pursuant to your request and to the draft transcript stipulation to which you agreed.

Regarding point (5) of your letter, we have produced to you recordings of the defendant's conversations with the undercover agents, transcripts and summaries of those conversations, and copies of email exchanges between them. We do not agree to provide information constituting opinions about whether the defendant had trouble understanding or communicating with the undercover agents. We note, in any event, that we are not concerned that the defendant had such trouble.

Very truly yours,

PREET BHARARA
United States Attorney

by: ___/s___________________________
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